

# Exhibit L

8-8-06 hearing.txt

1

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK  
2 -----X

2  
3 UNITED STATES OF AMERICA

3  
4 v.

05 Cr. 621 (KMK)

4  
5 ALBERTO VILAR  
5 GARY TANAKA,

Hearing

6 Defendant.  
6 -----X

7 New York, N.Y.  
7 August 8, 2006  
8 11:30 a.m.

8 Before:

9 KENNETH M. KARAS

District Judge

10  
10  
11 MICHAEL J. GARCIA  
11 United States Attorney for the  
12 Southern District of New York  
12 One St. Andrew's Plaza  
13 New York, N.Y. 10007  
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18  
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1 (Hearing resumed)  
2 THE DEPUTY CLERK: Counsel, state their appearances.  
3 MS. MCEVOY: Deirdre McEvoy and Marc Litt for the  
4 government with us is U.S. Postal Inspector Cynthia Fraterrigo  
5 and Eric Glenn from the paralegal office.  
6 MS. HOFFMAN: Mr. Hoffman and Ms. Eftychiou is here.  
7 MR. KOBRE: Steven Kobre and with me is Glenn Colton  
8 and Justin Sher and Jessica Mergolis for Mr. Tanaka.  
9 THE COURT: Good morning, all.  
10 We left off, I believe, with inspector Fraterrigo on

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2 BY MR. KOBRE:  
3 Q. Inspector, in connection with your presence at Mr. Tanaka's  
4 room, did you fill out a memorandum of interview?  
5 A. Yes.  
6 Q. And I am going to show you -- actually, after filling out a  
7 memorandum interview, did you then at a later time make an  
8 adjustment or a change to the memorandum of interview?  
9 A. Yes.  
10 Q. Do you remember when you actually made that change?  
11 A. It was within, like, two weeks after, I think.  
12 MR. KOBRE: May I approach, your Honor?  
13 THE COURT: You may.  
14 MR. KOBRE: Your Honor, we had put up a binder for  
15 your Honor right in front there, because we have been using two  
16 letters, DD, EE. It only shows as one D or E.  
17 THE COURT: Yes. Actually, I have got two sets of Ds  
18 and Es.  
19 MR. KOBRE: It would be the first set.  
20 THE COURT: One set is the secret of staying young. I  
21 don't imagine that is it. And the other is an article called  
22 300 calories. I don't know if that is a hint to me, Mr. Kobre,  
23 or what.  
24 MR. KOBRE: I am going to hand you up another copy and  
25 take that back. I apologize. That was my mistake, your Honor.  
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6886tan1 C. Fraterrigo - cross  
1 It is W and X.  
2 THE COURT: Got it. Although, I will take the 300  
3 calories under advisement.  
4 For the record are these actually WW and XX?  
5 MR. KOBRE: Yes. That picks up from the sequence from  
6 the last date.  
7 THE COURT: Yes.  
8 BY MR. KOBRE:  
9 Q. You see the document marked 3501-D?  
10 A. Yes.  
11 Q. Take a look at that document. That document was prepared  
12 by you in relationship to your observations of Mr. Tanaka's  
13 interview, is that correct?  
14 A. Yes.  
15 THE COURT: Which is for the record is WW.  
16 MR. KOBRE: Yes, WW.  
17 Q. And take a look at the last page. You signed that  
18 document, right?  
19 A. Yes, I did.  
20 Q. Now, on XX, which is 3501-E, that is the later version of  
21 the document, correct?  
22 A. Yes.  
23 Q. And one of the things that you changed in the document was  
24 on the second page at the top. It talks about something that  
25 Mr. Tanaka had stated that he had no involvement?  
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6886tan1 C. Fraterrigo - cross  
1 A. Yes.  
2 Q. That is the distinction between the two documents, correct?  
3 A. Also, there was no space between five and a million.  
4 Q. Say that one more time.  
5 A. On page 1, there was a space between -- an added space  
6 between five and million.

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7 Q. I see. You made this change approximately two weeks later?  
8 A. I am -- within two weeks. I don't know when.  
9 Q. Do you see at the top of ww there is a fax line and a date?  
10 A. Yes.  
11 Q. At the top of xx there is a fax line and a date?  
12 A. Yes.  
13 Q. Does that refresh your recollection as to when you might  
14 have made the changes to the documents?  
15 A. No.  
16 Q. Although you are saying it is within two weeks, it is fair  
17 to say they were not actually created on the same day?  
18 A. These two documents?  
19 Q. Yes.  
20 A. No. I don't think so.  
21 Q. Do you see that on xx which is 3501-E that document is  
22 signed by you, correct?  
23 A. Yes.  
24 Q. Can you see the date that you put next to your name?  
25 A. Yes.

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6886tan1

C. Fraterrigo - cross

1 Q. It says May 28?  
2 A. Yes.  
3 Q. That wasn't the date that you actually signed this  
4 document, was it?  
5 A. No. This is part of the form and I had just signed it.  
6 Q. Well, this document was a form document?  
7 A. It is a template in our system. So when I had this -- this  
8 one was a draft. The first one was a draft. I signed it and  
9 then when I realized that I had from my notes on this second  
10 one, I didn't add that statement, so I added that statement and  
11 I just signed it. I didn't change the date.  
12 Q. On other memoranda of interview when you have a draft  
13 document, you have actually indicated on it "draft," haven't  
14 you?  
15 A. Not particularly. Sometimes I don't sign it if it is a  
16 draft.  
17 Q. Is it fair to say whatever is on this 3501, which is the  
18 final version, it says May 28, 2005, and that date is wrong?  
19 A. That date is wrong, that's correct.  
20 Q. And while you are using a template, it is also true that  
21 you had the ability to change the template to actually put the  
22 correct date, isn't that right?  
23 A. Yes.  
24 Q. But the way the final version appears, it appears that you  
25 actually wrote this report up just two days after the date of

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C. Fraterrigo - cross

1 interview, isn't that right?  
2 A. Yes.  
3 Q. That is not the case, isn't that correct?  
4 A. No. Not on the second draft.  
5 Q. So you spent 45 minutes in Mr. Tanaka's room?  
6 MS. MCEVOY: Objection. Mischaracterizes the witness'  
7 testimony.  
8 THE COURT: Really? That is what I thought she said.  
9 MS. MCEVOY: She said "approximately."  
10 THE COURT: Okay.  
11 MR. KOBRE: Noted.

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12 Q. You spent approximately 45 minutes in Mr. Tanaka's room, is  
13 that right?

14 A. Yes.

15 Q. Then what did you do immediately after leaving Mr. Tanaka's  
16 room?

17 A. We brought him back to our office at 90 Church Street to  
18 process him after he was in the back. We brought him to the  
19 back of our offices. Curtis Roinestad, the postal inspector,  
20 handle all the processing and I was in my office trying to take  
21 care of other matters.

22 Q. Matters relating to this case?

23 A. Yes.

24 Q. Approximately how long did it take you from the time you  
25 left the hotel room to the time that you left the location, the

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C. Fraterrigo - cross

1 postal inspection service, I guess?

2 A. Form the time that I left the hotel to my office, I don't  
3 recall how long it took.

4 Q. I am trying to figure out do you remember approximately  
5 what time you left your office?

6 MS. MCEVOY: Your Honor, to do what?

7 Q. Imagine sometime thereafter you left your office?

8 A. To go to the search, yes.

9 Q. What time did you leave?

10 A. Approximately 11:00 or so. I don't recall exactly.

11 Q. Then you headed over to the search?

12 A. Yes.

13 Q. To your recollection you got to the search at approximately  
14 12:00, about noontime?

15 A. It was around lunchtime. I recall that.

16 Q. When you arrived actually at the search, tell us now what  
17 it is that you observed?

18 A. I observed postal inspectors in offices searching, going  
19 through file cabinets and desks. I saw Amerindo employees in  
20 the lobby area and other inspectors in the conference room  
21 filling out inventory sheets.

22 Q. Did you go to Inspector Feiter to talk to him at that time?

23 A. Yes.

24 Q. Tell us what he told you and what you told him?

25 A. He told me that the Amerindo employees were here, some of

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C. Fraterrigo - cross

1 the employees were still here and that Amerindo's attorney was  
2 present, Eugene Licker and that he left Alberto Vilar's office  
3 for me to search. He also told me that other inspectors were  
4 called in to assist in the search. And we were discussing  
5 Alberto Vilar's arrest.

6 Q. Now, I just want to focus briefly on those other inspectors  
7 you were called in to assist in the search. Do you recall off  
8 the top of your head who some of them -- inspectors I take it,  
9 right?

10 A. Yes.

11 Q. Do you recall off the top of your head who some of those  
12 inspectors were?

13 A. I believe one was my husband Robert Fraterrigo, Ralph  
14 Nardo, Steve Barrientos, Jimmy Jinn. And I can't recall the  
15 others if there were.

16 Q. J-i-n-n?

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C. Fraterrigo - cross

1 THE COURT: She said it doesn't refresh her, so I'm  
2 not sure why they should be marked at all. They're in the  
3 folder. Presumably the folder will be kept in the condition  
4 it's in now.

5 MR. KOBRE: Okay.

6 Q. So just so I understand it, Inspector, you know there is  
7 something that's inaccurate in this MLAT, but you have -- you  
8 do not have a specific recollection as to what it is that's  
9 inaccurate, is that right?

10 A. No, I -- the -- I don't have a specific recollection of --  
11 I just know that there was something regarding the meeting. I  
12 just can't --

13 Q. Something regarding the meeting?

14 A. Who was present at the December 2000 -- I think it was  
15 relating to that. I can't be sure.

16 Q. Just to -- finish.

17 A. It's nothing -- it's nothing on the fact of what's in here.  
18 I think it was just those who were present.

19 Q. Okay. And is it, essentially, that something about the way  
20 that meeting is described in this MLAT that you believed to be  
21 inaccurate?

22 THE COURT: She was asked and answered that.

23 A. I said no, who was present --

24 THE COURT: Hang on, Inspector. As to who was there  
25 she's asked and answered -- it's been asked and answered.

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C. Fraterrigo - cross

1 Q. Well, if I may just as far as who was there, say, just so I  
2 understand, you're saying that you believe that as to who was  
3 there is not accurately described in this MLAT; is that your  
4 understanding?

5 A. I think one of the individuals, yes, that was there --

6 Q. Okay.

7 THE COURT: Okay.

8 A. -- it's not accurate.

9 MR. KOBRE: Thank you.

10 THE COURT: Sure. All right, Miss McEvoy, redirect.

11 MS. MCEVOY: Your Honor, may I have a brief sidebar?

12 THE COURT: Why not.

13 (At the sidebar)

14 MS. MCEVOY: Your Honor, at the July 7th and July 10th  
15 hearings, the inspector gave some answer that the government  
16 did not anticipate which the government believes it was a  
17 product of confusion or misunderstanding, but the government  
18 would ask for 10 or 15 minutes with the Inspector prior to  
19 redirect to confirm that.

20 MR. HOFFMAN: Can we be present? Have you any  
21 objections to us being present during that conversation?

22 MS. MCEVOY: I mean -- to the extent that it is a  
23 product of confusion and misunderstanding, the defense  
24 counsel's presence might intimidate the witness, and not clear  
25 up whether or not in fact it was confusion. The government

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C. Fraterrigo - cross

1 just has to satisfy itself that that's correct, and the  
2 government does not expect to prep her during this time period.

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3 It's just --  
 4 THE COURT: Well, but if it's not prep, then what is  
 5 it?  
 6 MS. MCEVOY: It's to clarify, for our purposes, the  
 7 fact that it was a misunderstanding as opposed to something  
 8 else. We need to know that.  
 9 THE COURT: As opposed to something that she  
 10 intentionally misstated, is that what you're worried about?  
 11 MS. MCEVOY: I don't -- if you read some of her  
 12 answers literally, I think the record is not clear right now,  
 13 and I -- exactly that -- not that she intentionally misstated,  
 14 but that she didn't mean what the --  
 15 THE COURT: That's what redirect is for. I mean  
 16 that's -- I don't understand what you're asking. If you take  
 17 her in the witness room and you ask her some questions to  
 18 satisfy yourself whether or not there was confusion or  
 19 something more nefarious than that, the first thing that's  
 20 going to be asked on recross is what it is that she was asked  
 21 back in the witness room.  
 22 MCEVOY: And in fact, your Honor, I plan to elicit  
 23 from her what I ask her.  
 24 THE COURT: So what's the problem with having counsel  
 25 there to begin with?

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C. Fraterrigo - cross

1 MCEVOY: Just for the -- it's to the extent she's  
 2 confused and not understanding, and I think counsel's presence  
 3 is not going to --  
 4 THE COURT: But if they're not going to say  
 5 anything -- I mean, it's not like they're mean people. I don't  
 6 really understand what the problem is. If they're just  
 7 standing there and they're not asking her questions, what is it  
 8 that you're worried about? She doesn't strike me as the kind  
 9 of person that who gets intimidated by the mere presence of  
 10 other adults.  
 11 MS. MCEVOY: I would disagree, your Honor. Based on  
 12 the --  
 13 THE COURT: A United States Postal Inspector is afraid  
 14 of what?  
 15 MS. MCEVOY: I'm not --  
 16 THE COURT: Come on.  
 17 MR. HOFFMAN: I was just going to say, I have no  
 18 objection if Colton is not there.  
 19 MR. KOBRE: Nor do I.  
 20 THE COURT: I am glad that's on the record. Go ahead.  
 21 Go ahead. It's an unusual request. You'll have to  
 22 admit it's an unusual request. You're seeking to prep a  
 23 witness in the middle of her testimony.  
 24 MS. MCEVOY: No, your Honor. In fact, I've been given  
 25 the opportunity many times to -- not to prep a witness, to ask

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C. Fraterrigo - cross

1 a few clarifying questions before redirect. It's -- cross is  
 2 finished. We haven't been allowed to, you know, to prep the  
 3 witness.  
 4 THE COURT: It's not as if she's on cross. I mean, I  
 5 don't think there's any bar like there is when she's on cross.  
 6 To the extent that Miss McEvoy is going to elicit what it is  
 7 that she asked her in the back, you're going to -- in the

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8 witness room --  
 9 MS. MCEVOY: Yes, yes, very briefly.  
 10 THE COURT: So what's the problem, gentlemen?  
 11 MR. HOFFMAN: It just seems, frankly, somewhat  
 12 unseemly, and it's going to open up on recross, you know, the  
 13 question of what were you told, et cetera, et cetera. I think  
 14 it's --  
 15 THE COURT: But that's true of any prep. I mean, if  
 16 they took her in the witness room right before they started  
 17 direct, no doubt you would ask her what she was asked.  
 18 MR. HOFFMAN: That's true. I'm just trying to do a  
 19 process that doesn't require that. I mean, if she simply is  
 20 going to say, were you asked this, did you answer that and did  
 21 you understand the question, and is that your proper answer,  
 22 what's the difference if we're sitting there? I mean then we  
 23 don't have to be concerned then she was nudged or told or  
 24 might -- you know, it's just --  
 25 THE COURT: But that's true of any witness.  
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C. Fraterrigo - cross

1 MR. HOFFMAN: I understand.  
 2 THE COURT: I mean, I do think with all the lawyers in  
 3 this case, as I do in all cases, I personally, lawyers will  
 4 follow their ethical obligations and there is no reason  
 5 whatsoever to doubt that here. I think it might --  
 6 MS. MCEVOY: That's exactly why I come to ask for  
 7 this.  
 8 THE COURT: I think it might be more efficient, in  
 9 fact, to do it this way. And to the extent that you all are  
 10 going to get a chance to -- I'll give you leeway on recross --  
 11 MR. HOFFMAN: Okay.  
 12 THE COURT: -- as to what was done in the witness  
 13 room. I don't have a problem with that. And, Miss MCEvoy, I'm  
 14 going to trust you to give us a full recitation of what went on  
 15 back there when you are examining the witness on redirect.  
 16 Okay.  
 17 MS. MCEVOY: Yes, your Honor. And prior to actually  
 18 asking the witness any questions in the room, I will let her  
 19 know that I will be asking her what we talked about.  
 20 THE COURT: Okay.  
 21 MR. KOBRE: The only thing I would say is that I think  
 22 it's one thing if your Honor's going to grant the government to  
 23 take five or ten minutes to meet, and I'm not sure there is a  
 24 prohibition if the witness is still on cross-examination. The  
 25 only -- I guess the only part of the objection I would have to  
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C. Fraterrigo - cross

1 it is if in any way -- the reason is because is the government  
 2 believes this witness was mistaken and not like was confused  
 3 and not mistaken. I don't think that should form a basis of  
 4 what the government should be allowed to speak to the witness  
 5 or not.  
 6 THE COURT: If the government is concerned about the  
 7 veracity of its witness, I'm not talking about this case, but  
 8 in general, they have ethical obligations to address that,  
 9 sooner rather than later. If, because of the way this has been  
 10 broken up, they haven't had a chance to address this with her  
 11 until now. And, look, I'm going to let them do it. They're  
 12 telling me it's going to take 10 or 15 minutes. I'm going to



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13 give leeway on cross.  
14 MR. KOBRE: Okay.  
15 THE COURT: I made it clear to Miss McEvoy what my  
16 expectations is.  
17 MR. KOBRE: Right.  
18 THE COURT: So I don't have a problem with it, all  
19 right. So let's go ahead and take a 15 minute break and go in  
20 the back with the witness go ahead, Miss McEvoy.  
21 MR. KOBRE: Actually one other thing before we break.  
22 will it be just Miss McEvoy or Mr. Litt as well who might  
23 ultimately be having to testify to the interaction between the  
24 two of them?  
25 THE COURT: I would expect you would have somebody  
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688ztan2 C. Fraterrigo - cross  
1 else, other than yourself there.  
2 MS. MCEVOY: Yes.  
3 THE COURT: I don't know it needs to be Mr. Litt,  
4 especially if you're going to go over things that were done  
5 with Mr. Litt.  
6 MR. HOFFMAN: I'll go with you.  
7 THE COURT: I mean, you have somebody else here.  
8 MS. MCEVOY: Actually, I wasn't planning on going over  
9 anything with Mr. Litt.  
10 THE COURT: You have another person at your table you  
11 may want to bring in --  
12 MS. MCEVOY: Okay.  
13 THE COURT: -- as a witness to the conversation.  
14 That's a good suggestion.  
15 MS. MCEVOY: Okay.  
16 THE COURT: Okay, all right. Thank you.  
17 MR. LITT: May I just ask a question? Am I precluded  
18 from going in then, even if the discussion doesn't concern  
19 anything about me?  
20 MR. KOBRE: It would be -- he's not -- this isn't his  
21 witness. It would be our preference -- he is still technically  
22 on cross from his other testimony. I just think, frankly, if  
23 they're going to be asking someone extraordinary relief, it  
24 seems like we can at least just have Miss McEvoy and the  
25 witness as opposed to having Mr. Litt there as well.  
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688ztan2 C. Fraterrigo - cross  
1 MR. HOFFMAN: Because there were questions about  
2 conversations between them.  
3 MR. KOBRE: Right.  
4 THE COURT: But that's not going to be the subject of  
5 your inquiry.  
6 MS. MCEVOY: That's not a subject --  
7 THE COURT: I don't think it matters. He's already a  
8 witness. But in all seriousness, to the extent she's not, Miss  
9 McEvoy is going to go over material with the Inspector that we  
10 have been having Mr. Litt excuse himself from, then I don't see  
11 that it's any different from him being in the courtroom during  
12 the examination.  
13 MR. KOBRE: Okay, that's fine.  
14 THE COURT: As long as it's not going to involve  
15 anything --  
16 MS. MCEVOY: It won't. I make that representation.  
17 THE COURT: I still think it would be prudent to have

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18 the other person at your table.  
19 MS. MCEVOY: I agree, your Honor.  
20 THE COURT: Okay, all right. So we'll take 15  
21 minutes.  
22 All right, we'll take a 15 minute recess.  
23 (Recess taken)  
24 (Continued on next page)  
25

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6886TAN3 Fraterrigo - redirect

1 (In open court)  
2 THE COURT: Ms. McEvoy, are you prepared to go ahead?  
3 MS. MCEVOY: Yes, your Honor. May I proceed?  
4 THE COURT: You may.  
5 BY MS. MCEVOY:  
6 Q. Inspector Fraterrigo, after cross-examination but prior to  
7 your testimony now on redirect, did we spend some time together  
8 in the jury room?  
9 A. Yes.  
10 Q. Approximately how long did we spend together?  
11 A. About 10 minutes.  
12 Q. Were two other AUSAs present?  
13 A. Yes.  
14 Q. To the best of your recollection can you recount for the  
15 Court what I said to you and what you said to me?  
16 A. You pointed out a question that the Court asked me on one  
17 of the days I testified regarding clients, if there was  
18 probable cause with the client list. I indicated to you that  
19 my answer was incorrect.  
20 There were also questions --  
21 Q. Before we get to the other questions, can you turn to the  
22 transcript before you, July 10 transcript, page 94.  
23 A. Yes.  
24 Q. Lines 4 through 8 where the Court asked the question: Is  
25 it a fact that you knew you didn't have probable cause to get

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6886TAN3 Fraterrigo - redirect

1 every client list at the time you went and got the warrant?  
2 Mr. Hoffman says, Correct. And you say, That's  
3 correct.  
4 A. Yes.  
5 Q. Is that the question you were referring to that I asked you  
6 about in the jury room?  
7 A. Yes.  
8 Q. And with respect to the --  
9 MS. HOFFMAN: Can I have one second to find --  
10 THE COURT: Sure.  
11 MS. HOFFMAN: Thank you.  
12 THE COURT: Go ahead.  
13 Q. With respect to the part of the question where the Court  
14 asks you: Is it a fact that you knew you didn't have probable  
15 cause to get every client list at the time you went and got the  
16 warrant, what do you recall me asking you about?  
17 A. You asked me if, you know, about the question, if there was  
18 any confusion in the question that was asked and I recall  
19 stating that, yes, that during that series of questioning that  
20 specific client names were asked of me during my cross and I  
21 believe what was said was that it was specific questions about  
22 particular clients.

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23 Q. Sorry. When you say "what was said," what are you  
24 referring to?  
25 A. What I had previously testified about. I mentioned  
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6886TAN3

Fraterrigo - redirect

1 particular -- I was asked about particular clients and I  
2 believe that there is probable cause to get client lists at the  
3 time I had the warrant.

4 Q. In the robing room just now, did I ask you questions about  
5 whether you believed probable cause existed?

6 A. Yes.

7 Q. At the time you got the warrant?

8 A. Yes.

9 Q. And did I ask you when you answered the Court's question,  
10 specifically the question on page 94 whether you were saying  
11 that at the time you got the warrant you knew you didn't have  
12 probable cause but told the magistrate anyway --

13 MS. HOFFMAN: I am going to object to the leading. I  
14 don't want her asking what did I ask and what did you answer.

15 THE COURT: It is as leading as it gets. Rephrase the  
16 question.

17 Q. What did I ask you, Inspector Fraterrigo, about your state  
18 of knowledge at the time -- let me finish-- at the time you  
19 got the warrant, and second what you meant when you answered  
20 this question?

21 A. At the time I got the warrant, I knew I had probable cause  
22 to get every client.

23 MS. HOFFMAN: Objection.

24 THE COURT: That is not the question what it is Ms.  
25 McEvoy asked you in the jury room questioning. It was a  
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1 compound question. Let's start with the first point. What is  
2 it that you Ms. McEvoy asked you back in the jury room about  
3 your answer to my question on July 10?

4 THE WITNESS: You asked me to read the question. I  
5 read the question and I said to you that at the time I got the  
6 warrant I knew I had probable cause for every client list. And  
7 you asked me if there was a confusion with the question at the  
8 time and I said yes. And I explained to you that during my  
9 cross with Hoffman I had tried to explain to myself and in a  
10 brief moment in one of his questions about the client list. I  
11 explained about the clients that he was specifically pointing  
12 out to me. I said at the time I knew I had probable cause and  
13 I said this statement here what I answered the Court was  
14 incorrect.

15 BY MS. MCEVOY:

16 Q. What did you tell me in the robing room about how it was  
17 incorrect?

18 A. That I -- that in the affidavit I knew I stated that there  
19 was probable cause to believe that to take client lists, other  
20 than the clients that were mentioned, because these two  
21 individuals were investment advisors, they had clients that  
22 were investors, and that I had probable cause on particular  
23 clients and I had information on particular clients and I had  
24 reason to believe that other investors and other clients were  
25 being defrauded.

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Q. Before we get there, let's just finish up with the topic of what was discussed in the robing room. Other than this question that was asked by the Court of you and what your answer was what, if any, other questions did I ask you?

A. You asked me if -- did I believe -- there was a question about probable cause and fact.

MR. KOBRE: Objection. It looks like the witness is reading something. I am asking what she is reading.

THE WITNESS: The transcript.

THE COURT: She is reading the transcript.

MR. KOBRE: I would ask that either she not read from it. The question was what did Ms. McEvoy ask which had no bearing on the transcript.

MS. MCEVOY: I believe the inspector testified she was asked about a specific question in the transcript.

THE COURT: That is what I thought. The point is taken. Go ahead.

THE WITNESS: I can't recall the question. What is the question?

BY MS. MCEVOY:

Q. In addition to the specific question pointed out on page 94 what, if any, other questions were you asked in the robing room?

THE COURT: The jury room.

Q. The jury room. Sorry.

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A. I was asked if I was confusing the probable cause and fact in the search warrant affidavit. I was also asked -- when I provided my answer, I was also asked about the link between the investors that were named in the affidavit and those who were not named.

Q. And is that what you recall discussing in the totality in the jury room?

A. No.

Q. What else do you recall?

A. I recall explaining in the affidavit I did not specifically mention particular clients, particular investors, particular funds. I said in the series of questions that I was answering to Hoffman about, for instance, L.A.P.D. client. When he asked if there was probable cause to take this, it was not -- my answer was not focused on what was in the affidavit. The affidavit did not specifically say L.A.P.D. Fire. But what I was answering to him is that it did not say it specific.

However, it was mentioned in the affidavit as these are clients, these are investors, and I had probable cause to believe that other investors were possibly being defrauded. I had reason to believe that based on my information of these other victims and facts that I provided to magistrate that the purpose of this search warrant was to identify other investors, i.e., other clients that were possibly defrauded.

Q. What, if anything, else do you recall discussing in the

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jury room?

A. I recall discussing that the -- one of these days of this -- of the -- one of the two days that I testified that I

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4 remembered being frustrated that I wanted to state this to the  
5 Court and I had came back in one instance and tried to clarify  
6 my statement and tried to clarify what I meant that I was being  
7 specifically asked particular investments about particular  
8 clients and they are not typed in the affidavit. However, it  
9 is mentioned as -- as a -- there was reason to believe and  
10 there was probable cause to believe that these two individuals  
11 could be defrauding other investors and other clients, and that  
12 is what I explained to you in the jury room.  
13 Q. In the jury room did anyone from the government tell you  
14 what to say either on redirect or examination or on recross?  
15 A. No.  
16 Q. Is there anything else you recall from the robing room  
17 before we get onto another topic?  
18 A. No.  
19 Q. Let's start with you mentioned just now trying to clarify  
20 at one point during your previous testimony what you meant.  
21 A. Yes.  
22 Q. Can you turn to the transcript before you, July 10, pages  
23 97 and 98. On 97 it starts with line 16 and page 98 I think it  
24 ends with line 17. If you could take a moment and read that to  
25 yourself?

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1 A. Page 97?  
2 Q. Yes. And 98. Starting with line 16 on 97.  
3 A. Yes.  
4 Q. Is this the first time you had an opportunity to read this?  
5 A. Yes.  
6 Q. Did you discuss this portion -- any of the transcript other  
7 than with the government other than the question I asked you  
8 about on page 94?  
9 A. Yes.  
10 Q. So other than the question on 94 did you discuss any of  
11 this transcript with anyone from the government prior to right  
12 now?  
13 A. Correct.  
14 Q. Correct what?  
15 A. You only asked me about that one particular question on the  
16 transcript not about this, or any other part of my transcript.  
17 Q. When you were saying a time in your prior testimony where  
18 you were trying to clarify what you meant, is this the part of  
19 the proceeding where you were trying to do that?  
20 A. Yes.  
21 Q. What were you trying to convey here?  
22 A. What I was trying to --  
23 MS. HOFFMAN: I object, your Honor, to what she was  
24 trying to convey. It says what it says.  
25 THE COURT: Just rephrase the question. I don't have

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1 it in front of me.  
2 Q. Can you explain what you were trying to clarify?  
3 A. I was trying to clarify that Mr. Hoffman was asking me a  
4 series of questions about particular clients, particular  
5 investments and asked me if I specifically had probable cause  
6 to take this item.  
7 Q. Let's stop there. Had probable cause. What were you  
8 interpreting his question to mean?

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9 A. I was interpreting it to mean that if it -- if it was named  
10 in the document, if it was named in the affidavit, if it was  
11 specifically named by its name in the document.  
12 Q. When you say "by its name"?  
13 A. File name, client name, investor name, fund name. That is  
14 what I interpreted it. Because --  
15 Q. Let me ask you a follow-up question?  
16 THE COURT: Don't cut her off.  
17 Q. Go ahead.  
18 A. When he asked me a series of questions about the -- when he  
19 asked me a series of questions, he followed up with find it in  
20 the affidavit. Specifically, do you see L.A.P.D. or do you see  
21 this fund name in the affidavit. And I did not see that  
22 particular fund name. I did not see that particular client  
23 name, but I -- what I was trying to explain here was that I had  
24 probable cause and reason to believe there were other  
25 investments, other funds that were being defrauded by these two  
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1 individuals. That is what I was trying to explain. That is  
2 what I presented to the magistrate.  
3 MS. HOFFMAN: Your Honor, one moment. Can I ask the  
4 stenographer to mark this place so it doesn't take us a long  
5 time on recross to ask her about this question.  
6 THE COURT: You want the stenographer to put a special  
7 gold star on the page.  
8 BY MS. MCEVOY:  
9 Q. So I am clear, when Mr. Hoffman asked you a series of  
10 questions on cross-examination about whether you had probable  
11 cause to see certain items, specifically the words "had  
12 probable cause," what was your interpretation of those  
13 questions?  
14 A. That if it was written in the actual affidavit, that  
15 particular -- that particular file, if it was actually written  
16 in the affidavit. I interpreted as how it was written, if it  
17 was written in the affidavit, where was it. That was a series  
18 of questions that followed. I misinterpreted. I meant that it  
19 may not be mentioned by its name by particular investor, but it  
20 is mentioned as there was reason to believe and probable cause  
21 that it was in the affidavit.  
22 Q. When you say on lines 20 to 23 on page 97 "This falls along  
23 the part of the affidavit that I did not specifically put this  
24 item in, have evidence specifically for this, but there was  
25 probable cause that this was covered under," can you explain  
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1 that?  
2 A. What I was trying to explain before, I don't know what the  
3 document MN is but I didn't -- like I stated, I didn't  
4 specifically name every investor of Amerindo. I didn't  
5 specifically name every fund or every item. It was -- what I  
6 was trying to explain was that I had facts -- at the time of  
7 these particular victims that were mentioned by name in the  
8 affidavit, I had facts about particular funds, particular  
9 accounts. But as I presented to the magistrate and I was  
10 trying to explain here that in my affidavit, I had probable  
11 cause and reason to believe that other investors and other  
12 clients could be defrauded based on the information, based on  
13 the facts that I had. I did not name other investments. I



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14 didn't specifically name whatever the document MN was.  
15 Q. Turning to the next page, 98, lines 3 to 8. You say,  
16 "Those five individuals were the probable cause I submitted  
17 defrauded by these two individual. I put in the affidavit that  
18 there was probable cause and reason to believe there were other  
19 investors, other clients, other victims, other possible  
20 investments that could have also been defrauded by these two  
21 individuals"?  
22 A. Yes. That's correct.  
23 Q. As you just testified you used the terms "probable cause"  
24 and "reason to believe"?  
25 A. Yes.

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1 Q. Do you recall being asked by Mr. Hoffman on  
2 cross-examination about had you had probable cause to believe  
3 that other investors were being victimized?  
4 MS. HOFFMAN: Can we get page and line?  
5 MS. MCEVOY: Page 18, line 19 of July 10.  
6 MS. HOFFMAN: Thank you.  
7 Q. Do you recall being asked by Mr. Hoffman on  
8 cross-examination, "Inspector Fraterrigo, had you had probable  
9 cause to believe that other investors were being victimized.  
10 Had you had information that went to that higher level then you  
11 would have used that term if you had it, correct?" And your  
12 answer is "That's correct."  
13 what, if any, distinction are you making between  
14 probable cause and reason to believe or reason to be concerned,  
15 if any?  
16 A. I think my distinction is that -- that with --  
17 Q. Let me ask this another way.  
18 MS. HOFFMAN: I object, your Honor. Let her answer  
19 the question.  
20 THE COURT: I agree.  
21 A. With probable cause is what was in the affidavit. And my  
22 interpretation is those are the ones -- the information I had  
23 at the time were about particular investors. That was a  
24 probable cause. The ones I named in particular. I had reason  
25 to believe and as I presented in the affidavit, there could be

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1 other investors based on what I knew at the time and what I  
2 knew that there was a crime being committed, and I had reason  
3 to believe that other investors could be defrauded.  
4 Q. So when you say here on page 98, when you testified on page  
5 98, lines 4 through 8, "I put in my affidavit there is probable  
6 cause and reason to believe that there are other investors,  
7 other clients, other victims, other possible investments that  
8 could have also been defrauded by these individuals" --  
9 A. Yes.  
10 Q. -- what were you saying, if anything, regarding whether  
11 there was probable cause to believe that other investors  
12 besides the named clients were being defrauded?  
13 MS. HOFFMAN: I respectfully object. Asked and  
14 answered in the last question.  
15 THE COURT: I agree.  
16 Q. I am going to direct your attention, Inspector Fraterrigo,  
17 to pages 37 and 38 of July 10, lines 18 to 25 and then the  
18 following page 1 to 6.

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19 A. 37, line 18.  
20 Q. Yes. To the bottom and then the top of the following page.  
21 You should read the question too that starts on line 13 of page  
22 37.  
23 A. Okay.  
24 Q. You had a chance to read it?  
25 A. Yes.

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1 Q. When you said there was no probable cause submitted to the  
2 magistrate in the papers submitted to magistrate but you had  
3 authority to seize it, what did you mean?  
4 A. What -- I think what I am probably doing is confusing it  
5 that because I didn't specifically mention the brokerage  
6 account by name in the affidavit. I think that is what is  
7 causing the confusion.  
8 What I meant by having the authority to seize it, that  
9 there was, as I mentioned in the affidavit that there was  
10 reason to believe that other brokerage report accounts, other  
11 investors, other clients as well defrauded. Here it is I  
12 didn't specifically -- when I mean there was no probable cause  
13 that there was no specific fact or information put in the  
14 affidavit for that particular item.  
15 But there is probable cause to take it because there  
16 was reason to believe that they could be defrauding other  
17 investors using other brokerage accounts and using client's  
18 money. I just -- I think that is what is causing the  
19 confusion.  
20 Q. At the time you submitted your application -- first of all,  
21 a lot of terms have been thrown around. What does your search  
22 warrant application to the magistrate judge include?  
23 MS. HOFFMAN: I am going to object as this being  
24 redirect. We went all through that on direct as to every  
25 document that was gone through.

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1 THE COURT: I think in the context it is appropriate  
2 to lay some quick background. Go ahead.  
3 THE WITNESS: Can you repeat the question?  
4 BY MS. MCEVOY:  
5 Q. What documents did your search warrant application to the  
6 magistrate judge include?  
7 A. It included the complaints on Vilar and Gary Tanaka.  
8 Q. What, if anything, else did your application to the first  
9 search warrant include?  
10 A. It also included an attachment of items to be seized, facts  
11 of my investigation and probable cause.  
12 Q. When you say "facts of your investigation," what is the  
13 name of the document that includes the facts of your  
14 investigation?  
15 A. The affidavit.  
16 Q. Did you include in this affidavit all the information you  
17 had learned up until this point through the course of your  
18 investigation?  
19 A. No.  
20 Q. At the time you applied for the search warrant, did you  
21 believe that probable cause existed to search for the items  
22 described in your search warrant?  
23 A. Yes.



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20 magistrate judge, I am not sure what its relevance is.  
 21 MS. MCEVOY: Can I tie it then to whether based on her  
 22 experience she believed that gave her probable cause?  
 23 THE COURT: What difference does it make? Now you are  
 24 introducing things inside her head that were not in the  
 25 affidavit.

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1 MS. MCEVOY: But --  
 2 MS. HOFFMAN: I have obviously have no objection to  
 3 that in view of where we want to go.  
 4 MS. MCEVOY: I am not asking for the basis of her  
 5 belief. I am asking her did she believe.  
 6 THE COURT: She already said in the affidavit under  
 7 oath that she believed whatever it is she believed based on  
 8 facts known to her and based on things she could extrapolate  
 9 from those phone facts. That is your point.  
 10 MS. MCEVOY: Yes.  
 11 THE COURT: So taking out of the context of this case,  
 12 someone sells a kilogram of cocaine on Tuesday and based on  
 13 that experiences they may have drug records, they may have  
 14 scales and other paraphernalia used to sell drugs even though  
 15 the law enforcement doesn't have specific information that  
 16 there are drug records or other paraphernalia.  
 17 MS. MCEVOY: That is my point.  
 18 THE COURT: I think you should just move on.  
 19 MS. MCEVOY: Right.  
 20 BY MS. MCEVOY:  
 21 Q. I just want to ask you a couple questions, Inspector  
 22 Fraterrigo, about the questions you where are asked on  
 23 cross-examination about whether you didn't have or you didn't  
 24 submit probable cause to seize certain items. If you could  
 25 look at the transcript on July 7, page 150.

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1 THE COURT: Line?  
 2 MS. MCEVOY: 13.  
 3 Q. Do you recall being asked -- you can follow along if you  
 4 like -- "As I went down a list of a hundred or so other than  
 5 the two individuals who are mentioned by institutional entities  
 6 like this whose records were housed at the Park Avenue office  
 7 and were clients of Amerindo Investment Advisors Inc., the  
 8 registered investment advisory company, would it be accurate to  
 9 say you had no probable cause to seize their, I will use the  
 10 specific words 'investment brochure,' sent to or gotten to  
 11 correct? And then you say, "No." The next page Mr. Hoffman  
 12 asks: "No meaning, is that correct?" And you answer, "That is  
 13 correct."  
 14 When you testified just there on cross-examination,  
 15 what did you mean?  
 16 A. Again, it was like a series of questions from Mr. Hoffman  
 17 about particular investors, particular clients and I think I am  
 18 confusing the point of probable cause that I didn't  
 19 specifically mention whirlpool Corporation, which is mentioned  
 20 in line 11 or other individuals. I didn't specifically name  
 21 them by name in my affidavit, but I did submit to the  
 22 magistrate that there was probable cause and reason to believe  
 23 to have to seize information or that there would be information  
 24 at this location that there are other investors and other

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25 clients that could possibly have been defrauded.  
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1 Q. What did you submit in your application to give you  
2 probable cause to seize those items?  
3 A. I submitted an attachment and I submitted a description of  
4 the fraud in my complaints and I described particular  
5 witnesses, victims that were defrauded.  
6 Q. When you say submitted an attachment, what do you mean?  
7 A. An attachment of description of documents that should be  
8 seized.  
9 Q. Right. But what probable cause did you include your search  
10 warrant affidavit to seize those items?  
11 A. I submitted a paragraph describing that -- what I stated  
12 above, that there is reason to believe and probable cause that  
13 there are other possible investors that had been possibly  
14 defrauded.  
15 THE COURT: Did your affidavit or any attachments  
16 mention any specific institutional investors that had been the  
17 victims of any criminal conduct allegedly by the defendants or  
18 just individual investors?  
19 THE WITNESS: Both. It didn't specifically mention.  
20 THE COURT: It mentions not by name but you  
21 specifically identified individual investors who you say had  
22 been defrauded by the victim, correct?  
23 THE WITNESS: Correct.  
24 THE COURT: Did your affidavit or any other  
25 attachments specify in institutional investors that had been

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1 allegedly defrauded by defendants?  
2 THE WITNESS: When you say "specify," you mean name  
3 that specific institution?  
4 THE COURT: Did the affidavit mention there was a  
5 reason to believe that any institutional investors had been  
6 defrauded, or was it just based on the fact they were  
7 individual investors defrauded by the defendants?  
8 THE WITNESS: I can't recall without going through it  
9 again. I don't know if --  
10 THE COURT: That's all right.  
11 BY MS. MCEVOY:  
12 Q. If you can take a look, Inspector Fraterrigo, on page 5 of  
13 your affidavit. When it says the totality of the circumstances  
14 in this case, including the investors being prevented from  
15 redeeming or transferring the multiple million dollar  
16 investors, investors lack basic information about their  
17 investments and investment advisor who have made them believe  
18 false statements, about the status of a five-million-dollar  
19 investment. Is it fair to say that that portion --  
20 MS. HOFFMAN: Object, your Honor.  
21 THE COURT: Watch the leading nature.  
22 (Continued on next page)

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16 Q. So was it your view that you could seize any document, any  
17 Amerindo business document under paragraph one of that rider?  
18 A. No, no. I mean I -- I saw it as limiting to those what's  
19 followed through in the paragraph.  
20 Q. When you say what's followed through in the paragraph,  
21 you're going to have to explain.  
22 A. Within that paragraph what is described as including like  
23 shareholders, principals, officers, directors, employees and  
24 such, like that.  
25 Q. Did you view paragraph -- whether you executed that  
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1 warrant, did you view paragraph one as giving you the authority  
2 to seize any document with the word Amerindo on it?  
3 A. No.  
4 Q. Why not?  
5 A. Because the way I interpreted it is -- the way I  
6 interpreted the entire attachment is, is, you know, each  
7 paragraph kind of follows under the others. Where paragraph  
8 one is a general paragraph, it indicates every -- almost every  
9 document that's in the search warrant that's in the business;  
10 client lists, investment brochures, and then there's like  
11 specifics. The other paragraphs I took it as detailing kind of  
12 like an inverted pyramid kind of thing.  
13 Q. All right, let's break down that. When you said you viewed  
14 paragraph one as every item that's in the business?  
15 A. No. Paragraph one I took it as the -- as these corporate  
16 records relating to these entities.  
17 Q. Okay.  
18 A. These particular entities, and there's a description of  
19 what types of documents are in that paragraph.  
20 Q. Okay.  
21 A. And then there are following paragraphs that specifically  
22 name particular items regarding particular investments, and it  
23 follows through. I didn't -- I didn't interpret it that I had  
24 probable cause to take everything or I had the authority to  
25 seize everything in Amerindo.  
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1 Q. What about every, did you believe you had probable cause to  
2 seize every Amerindo business document?  
3 A. No.  
4 THE COURT: I want to understand exactly how it is  
5 that you think paragraphs below paragraph one limited paragraph  
6 one. That's what you're saying, right?  
7 THE WITNESS: Yes.  
8 THE COURT: Did you say it's a pyramid; it's almost an  
9 inverted pyramid, so the most generic description begins in  
10 paragraph one and the paragraphs that follow that narrow the  
11 scope of the search warrant?  
12 THE WITNESS: That's the way.  
13 THE COURT: So that each paragraph would narrow what  
14 precedes it?  
15 THE WITNESS: That's my impression.  
16 THE COURT: So then by that logic, the only thing you  
17 could look at is the last paragraph in the rider because that's  
18 the -- what defines the scope of the search.  
19 THE WITNESS: No, it's there -- paragraph one is, to  
20 me, is a general paragraph that indicates, you know, particular

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21 entities of Amerindo, and then it states shareholders,  
22 principals, officers, and such. The other documents provide  
23 specifics for paragraph one.  
24 Q. I think that's what we're trying to understand, Inspector  
25 Fraterriago?

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1 A. Yes. It's -- maybe it's not an inverted pyramid, but it's  
2 just each paragraph provides specifics for corporate records.  
3 Instead of the paragraph number one alone, corporate records  
4 can mean any business records in Amerindo; whereas, the other  
5 paragraphs provide -- narrows it down, I mean.  
6 Q. I guess what is -- what you can you explain for us on the  
7 one hand you just testified that you didn't interpret paragraph  
8 one to mean every Amerindo business record that you --

9 MR. HOFFMAN: Object, your Honor, to -- that's a  
10 misstatement of or mischaracterization.

11 THE COURT: Inspector, do you think -- you think you  
12 were entitled to take every single Amerindo business or  
13 corporate record under this search warrant?

14 THE WITNESS: No.

15 THE COURT: All right. And what was it that you think  
16 limited the scope of which corporate or business records of  
17 Amerindo you were allowed to take?

18 THE WITNESS: The other paragraphs in the attachment.

19 THE COURT: Okay. When you say any other paragraphs,  
20 what is -- what exactly does that mean here? Let me -- do you  
21 have the rider there with you?

22 THE WITNESS: Yes. This is -- these are the  
23 paragraphs from two to 17 limited, limited number one.

24 THE COURT: Okay. Can I just borrow that for a  
25 second. Was paragraph two limited by paragraph three?

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Fraterriago - redirect

1 THE WITNESS: No. Paragraph one was limited by the  
2 others. That's the way I took it. It's the way I took it.

3 THE COURT: So by that logic, would you even need to  
4 read paragraph one? You could just get rid of it and then you  
5 would be allowed to seize everything in paragraphs two through  
6 17. What purpose does paragraph one serve, then, in your view?

7 THE WITNESS: It provides a general sense, a general  
8 information of what particular documents.

9 BY MS. MCEVOY:

10 Q. Are there any -- when it says corporate records in  
11 paragraph one, are there any types of corporate records listed  
12 there that you believe paragraph one, standing alone, gave you  
13 authority to seize as opposed to any of the other paragraphs in  
14 the warrant --

15 A. Yes.

16 Q. -- rider? What types of corporate records did you view  
17 paragraph one giving you authority to seize without having to  
18 look at the rest of the rider?

19 A. Shareholder information, bylaws, resolutions, what's listed  
20 there.

21 THE COURT: What's listed in paragraph one?

22 THE WITNESS: Yes.

23 THE COURT: So -- I'm sorry. Could I borrow this  
24 again? So, according to paragraph one, you can seize any and  
25 all client files and marketing materials for any of the

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1 Amerindo entities; is that right?  
2                      THE WITNESS: Yes.  
3                      THE COURT: So then, in other words, what's in  
4 paragraph one stands alone and authorizes you to take any and  
5 all marketing materials for any of the Amerindo entities?  
6                      THE WITNESS: Yes.  
7 BY MS. MCEVOY:  
8 Q. When you executed the search warrant, did you view  
9 paragraph one standing alone?  
10 A. No. I made determinations when I was searching the office,  
11 I made particular determinations whether it was covered under  
12 the warrant, and then later determined if it was useful to the  
13 investigation, and I seized what.  
14 Q. Right. But you said you made a determination based on what  
15 did you --  
16 A. Based on this attachment, based on my understanding of the  
17 attachment.  
18 Q. And my question to you is, Inspector Fraterrigo, did you  
19 make that determination based on a particular paragraph?  
20 A. Yes.  
21 Q. Can you just explain for us the process you followed when  
22 determining which items to seize?  
23 A. I, as I went through documents, I made a determination  
24 whether it was covered under the warrant, and if it was covered  
25 under the warrant, I made a determination there whether it was  
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1 useful to the investigation, and if it was I seized it.  
2 Q. Under the Judge's question which he just asked you, client  
3 files, if, as you just testified, all Amerindo client files  
4 could be seized under paragraph one, what was the process you  
5 followed to determine whether or not you were going to seize  
6 the client files?  
7                      MR. HOFFMAN: I'm going to object to that. She asked  
8 the question before what process did you use. She answered it  
9 very specifically.  
10                      MS. MCEVOY: I'm asking a specific example here.  
11                      THE COURT: I'll allow the question.  
12 Q. If you came across a -- if, as you just testified, you were  
13 authorized to seize any client file under paragraph one of the  
14 rider?  
15 A. Uh-huh.  
16 Q. Did you, in fact, just seize all client files under  
17 paragraph one of the rider?  
18 A. Um, I seized client files that were relating to -- I don't  
19 know if I actually seized that particular client files. I  
20 mean, it would be covered under paragraph one.  
21                      THE COURT: Can I have this? All right. When it says  
22 that property that can be seized, paragraph one, court records  
23 concerning Amerindo investment advisors, and then it lists the  
24 other entities, including but not limited to marketing  
25 materials, copies of correspondence sent to or received from  
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1 client -- let's just take those two categories, marketing  
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- 13 A. For purpose of going through it to see what was in it and  
14 determining what could be of interest in these boxes.  
15 Q. Were there instances in which you reviewed the boxes, but  
16 could not identify the specific items listed in Miss Wolf's  
17 letter?  
18 A. Yes.  
19 Q. Approximately, how many types?  
20 A. There was one particular item.  
21 Q. One particular?  
22 A. There was one particular envelope or box that she named in  
23 the letter that I could not find.  
24 Q. What did you do in those instances?  
25 A. I tried -- I went through the rest of the boxes and I

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- 1 believe I located the possible document.  
2 Q. Did there come a time when you had a conversation with  
3 Ms. Wolf about which items she specifically wanted you to bring  
4 to the hearing?  
5 A. Yes.  
6 Q. Approximately, how many conversations did you have with  
7 Miss Wolf about the items listed in her letter?  
8 A. I believe it was may have been one, one conversation, maybe  
9 two. I can't recall.  
10 Q. And between the date of that letter, May 26, 2006 and  
11 today, did there also come a time when defense counsel  
12 requested access to the search materials?  
13 A. Yes.  
14 Q. Did you accommodate those requests?  
15 A. Yes.  
16 Q. How?  
17 A. I scheduled time to -- for myself to sit with them as they  
18 reviewed the boxes, and I also arranged other postal inspectors  
19 to sit with them as they viewed the boxes.  
20 Q. And approximately, on approximately how many occasions did  
21 you or other postal inspectors provide access to defense  
22 counsel so they could review the boxes in preparation for the  
23 hearing?

MR. KOBRE: Your Honor, to short circuit this, I don't  
think defense is at all claiming they didn't have access to

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- 1 these boxes.  
2 The issue is after being identified, defense counsel  
3 wanted to use them at the hearing, they were -- the items were  
4 removed and sent back to the company. The government can go  
5 through this line, take the time, but we don't contest access.  
6 THE COURT: I assumed that all along, yes. I  
7 didn't -- I agree, and anyway, I think you made the point.  
8 MS. MCEVOY: I'll just ask the question.  
9 THE COURT: Go head, ask the question.  
10 Q. When you were asked on cross-examination by Mr. Kobre  
11 whether you were trying to impede the defense from preparing  
12 for cross-examination, were you trying to impede them --  
13 A. No, I was not.  
14 Q. -- to prepare for cross-examination?  
15 With respect to the items you returned to Amerindo,  
16 what was your purpose in returning those items?  
17 A. The purpose was that decision was made that it was not



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18 covered under the warrant and it should have not been seized,  
19 and it was returned.  
20 Q. And what was the nature of those items?  
21 A. There were personal letters from Alberto Vilar to a woman,  
22 other personal letters of Alberto Vilar. I believe there was a  
23 CD with Spanish language. I can't recall the others.  
24 Q. Were they business records?  
25 A. No.

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1 Q. Do you recall being asked a question on cross-examination  
2 about whether you didn't have enough time to search each and  
3 every document in, or each and every note book in Mr. Vilar's  
4 office?  
5 A. Yes.  
6 Q. In addition to searching Mr. Vilar's office on May 26,  
7 2005, what, if anything, did you do at Amerindo's's offices  
8 that day?  
9 A. While I was there, I was trying to make arrangements for  
10 the arrest of Alberto Vilar in California. I was making a lot  
11 of calls. I answered postal inspectors' questions, I assisted  
12 in inventorying of documents. I went through the offices for  
13 the fax machines and printed out the journal reports from the  
14 fax machines, assisted team leader John Feiter in inventorying  
15 the boxes and having them removed by inspectors. I can't  
16 recall --  
17 Q. And --  
18 A. -- what else.  
19 Q. And, approximately, how long do you spend at the premises  
20 that day?  
21 A. Approximately eight hours, seven hours to eight hours.  
22 Q. And were you available to answer postal inspectors'  
23 questions during that entire period?  
24 A. Yes.  
25 Q. Do you recall being asked a question on cross-examination

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1 by Mr. Kobre about what probable cause in the search warrant  
2 did you include regarding searching Mr. Tanaka's office; do you  
3 recall that question?  
4 A. Yes.  
5 Q. Directing your attention to paragraph four of your search  
6 warrant affidavit, what if any information did you include in  
7 there about where Mr. Tanaka works when he's in New York?  
8 A. I stated that the affidavits prepared in support of the  
9 application, I indicated that Tanaka works when -- works at the  
10 399 Park Avenue, 22nd floor.  
11 Q. Works generally or --  
12 A. Works there when he's in New York.  
13 Q. I'm now going to focus your attention on the U.K search.  
14 THE COURT: Why don't we do this -- we're coming up on  
15 the breaking point, so why don't we break for the evening and  
16 we'll -- I assume you don't have too much time left.  
17 MS. MCEVOY: No.  
18 THE COURT: All right. So why don't we break now and  
19 then we can resume tomorrow morning at 9:30. Let's table the  
20 discussion about where we're at until tomorrow, in terms of  
21 when we're going to finish this thing.  
22 MR. HOFFMAN: Your Honor could I just ask that the

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23 other search warrant that Detective Fraterrigo testified she  
24 was involved with, or various statements she made about it,  
25 that that search warrant and its underlying affidavit be

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1 produced to defense?

2 THE COURT: Mr. Kobre?

3 MR. KOBRE: I have nothing on this, Judge. I was  
4 going to ask something else.

5 THE COURT: Let's just get all our requests out on the  
6 table.

7 MR. KOBRE: I just wanted to find out from the  
8 government who the witnesses will be for tomorrow.

9 THE COURT: Yes, that's a fair question. Who is going  
10 to be on tomorrow?

11 MS. MCEVOY: Mr. Litt will resume cross, and then  
12 there are three witnesses left, inspector or former postal  
13 inspector Feeney, inspectors Golden and Williamson and the  
14 Government's not sure exactly what -- where it's going to be,  
15 depending on the availability of those witnesses. They'll all  
16 be available, but --

17 THE COURT: Is there a particular order, though, that  
18 you're going to go in or --

19 MS. MCEVOY: Just because Mr. Feeney is now in the  
20 private sector --

21 THE COURT: He's going to go first.

22 MS. MCEVOY: We'll check with him to see if he's  
23 available. Yes. I don't know how long Mr. Litt's cross  
24 Mr. Hoffman anticipates.

25 MR. HOFFMAN: Couple hours.

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1 THE COURT: well, the good news is this trial is going  
2 to be shorter than it would have been, I'll tell you that.

3 All right. So it sounds like we'll still get to  
4 Feeney tomorrow, even if Mr. Litt is on cross for a couple of  
5 hours.

6 MR. HOFFMAN: To be more specific, at the outside a  
7 couple of hours. I mean it will be more than an hour, I  
8 believe.

9 THE COURT: All right. I'm happy to make a pool. Who  
10 wants the over under, three hours?

11 It's not meant to you, Mr. Hoffman. All right, so  
12 we'll go -- we'll finish up with Inspector Fraterrigo, then we  
13 go to Mr. Litt, then Mr. Feeney, and then we'll see where we're  
14 at.

15 All right. Now, I don't know, Inspector, that the  
16 materials that you -- this money laundering search warrant that  
17 you did, are they handy?

18 THE WITNESS: Yes, I think so.

19 THE COURT: All right. If you could go ahead and try  
20 to collect those and bring them with you first thing in the  
21 morning so that they can be made available to counsel.

22 All right, anything else we need to take up now?

23 MR. COLTON: Just a technical clarification. Agent  
24 Inspector Fraterrigo is no longer on cross, but Mr. Litt still  
25 is, so they should just be careful. I assume, of course, one

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 is released from that.  
 THE COURT: Come on.  
 MR. COLTON: I just want to make sure it's clear.  
 THE COURT: Come on. That's unnecessary.  
 All right, anything else?  
 MS. MCEVOY: No, your Honor.  
 THE COURT: All right, then have a pleasant evening.  
 We'll see you all tomorrow morning.  
 (Adjourned to August 9th, 2006 at 9:30 a.m.)

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